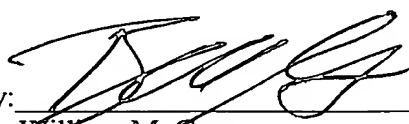


comprising a liquid reservoir [However,] Zhang does not disclose that the liquid reservoir is a capsule comprising water and a salt, the inorganic powder is that of the instant claimed invention or that active agent is for the treatment of acne.” See Page 3 of the Office Action. The Office Action continues to state on page 4 that “Fujiwara discloses a heating element, a controlled heating device, comprising a liquid reservoir that is a capsule containing water and salt The advantage of the heating element taught by Fujiwara is that longer heating duration is obtained and longer storage. Therefore, it would have been obvious to one of ordinary skill in the art to use the teachings of Fujiwara in the invention of Zhang et al. to make the device of the instant claimed invention” Applicants respectfully disagree.

As set forth in M.P.E.P. 2141.01(a), “In order to rely on a reference for the basis for rejection of an applicant’s invention, the reference must either be in the field of the applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the invention was concerned.” As set forth in the abstract of Fujiwara, the invention disclosed therein relates to the field of “heater poultices or disposable pocket heaters.” The invention of Fujiwara, thus, does not relate to the field or the problem of topically delivering an active agent as recited in independent claims 1 or 17. In addition, as recited in column 7 of Fujiwara, “The present invention described heretofore, provides a high temperature heating which lasts for a long time, because a heating element comprises a noble metal catalyst, an ion-containing solution and a metal powder.” Thus the asserted advantage of longer heating duration in Fujiwara is not stated to be a result of using a capsule, but rather the ingredients used to create the exothermic reaction.

Accordingly, Applicants respectfully request that the above rejection under 35 USC 103(a) be withdrawn, and Applicants respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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